

STATE OF TENNESSEE
PUBLIC CHAPTER NO. 70
SENATE BILL NO. 1588

By Overbey, Ford

Substituted for: House Bill No. 1550

By Shepard, Favors

AN ACT to amend Tennessee Code Annotated, Section 63-6-204 and Section 68-11-205, relative to renal dialysis clinics employing physicians.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 63-6-204, is amended by adding a new subsection (g), and by re-designating existing subsection (g) as (h):

(g)(1) Notwithstanding the provisions of this section, nothing shall prohibit a renal dialysis clinic licensed under Title 68, Chapter 11, or an affiliate of a renal dialysis clinic, from employing licensed physicians other than radiologists, anesthesiologists, pathologists, or emergency physicians, to provide medical services, subject to the following conditions:

(A) Employing entities shall not restrict or interfere with medically appropriate diagnostic or treatment decisions;

(B) Employing entities shall not restrict or interfere with physician referral decisions unless:

(i) The physician so employed has agreed in writing to the specific restrictions at the time that the contract is executed;

(ii) The restriction does not, in the reasonable medical judgment of the physician, adversely affect the health or welfare of the patient; and

(iii) The employing entity discloses any such restrictions to the patient; and

(C) In the event that there is any dispute relating to subdivision (g)(1)(A) or (B), the employing entity shall have the burden of proof.

(2) Employing entities shall not restrict the employed physician's right to practice medicine upon the termination or conclusion of the employment relationship, except as allowed by Tennessee Code Annotated, Section 63-1-148, or any successor section.

(3) Notwithstanding the provisions of Tennessee Code Annotated, Section 63-1-148, or any successor section, in the event that the employment contract with a physician employed independently of a bona fide practice purchase is terminated by the employing entity for reasons other than breach by the employee, any such restrictions shall be void.

(4) In any event, nothing in this section shall prohibit any of the following from employing physicians:

(A) A licensed physician; or

(B) A group of licensed physicians, including, but not limited to, either of the following:

(i) A physicians' professional corporation registered under Title 48, Chapter 101; or

(ii) A domestic nonprofit public benefit corporation:

(a) That is recognized as exempt under § 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), or any successor section;

(b) A purpose of which is to engage in medical education and medical research in conjunction with a college or university operating an accredited medical school in Tennessee;

(c) Whose physician-employees are restricted to the medical faculty of such a college or university; and

(d) Which operates as a "faculty practice plan" for purposes of Title XVIII of the Federal Social Security Act, 42 U.S.C. Chapter 7, subchapter XVIII, and regulations promulgated in connection therewith.

Provided, that with respect to any such domestic nonprofit public benefit corporation, physician employees of any such faculty practice plan who practice in the specialties of radiology, pathology, anesthesiology and/or emergency medicine shall be restricted to practice as faculty practice plan employees in those health care institutions, including, but not limited to, hospitals or surgery centers, in which they were practicing as employees of the nonprofit public benefit corporation on May 30, 1997.

(5) An affiliate of a renal dialysis clinic that employs physicians shall not engage in any business other than the employment of physicians, the management of physicians and health care facilities, or the ownership of property and facilities used in the provision of health care services, or a tissue bank or organ procurement agency. An affiliate

of a renal dialysis clinic that employs physicians pursuant to this part shall be subject to the authority of the applicable licensing board under Title 68, Chapter 11, in connection with employment of physicians. Any violation of this statute by an affiliate shall subject any renal dialysis clinic at which the physician has staff privileges, and that controls or is under common control with the affiliate, to the penalties and sanctions applied to renal dialysis clinics that employ physicians.

(6) No radiologist, anesthesiologist, pathologist, or emergency physician may be employed by a renal dialysis clinic or an affiliate of a renal dialysis clinic, and no renal dialysis clinic or an affiliate of a renal dialysis clinic may employ any physician to provide medical services provided by radiologists, anesthesiologists, pathologists, or emergency physicians; provided, that a physician may be employed to provide emergency medical services if such physician is employed to provide other medical services.

(7) As used in this section, unless the context otherwise requires:

(A) "Affiliate" of a renal dialysis clinic means an entity that directly or indirectly is controlled by, or is under common control with, a renal dialysis clinic licensed under Title 68, Chapter 11. "Affiliate" does not mean, however, a health maintenance organization licensed under Title 56, Chapter 32, Part 2;

(B) "Anesthesiologist" is a physician who has completed a residency in anesthesiology and whose practice is primarily limited to anesthesiology, including, without limitation, nerve block, pain management, cardiac and respiratory resuscitation, respiratory therapy, management of fluids, electrolyte and metabolic disturbances, or a dentist licensed in the State of Tennessee who completed a residency program in anesthesiology at an accredited medical school in years 1963 through 1977.

(C) "Emergency physician" is a physician who has either completed a residency in emergency medicine, or practiced emergency medicine full-time for a three year period, and whose practice is limited to emergency medicine. "Emergency physician" does not include, however, a physician who has been previously employed to provide nonemergent medical services who, over a period of twelve (12) months or more, becomes a full-time emergency physician and who remains employed by mutual agreement;

(D) "Employing entity" means a renal dialysis clinic licensed under Title 68, Chapter 11, or an affiliate of such an entity, that employs one (1) or more physicians. "Employing entity" does not mean, however, a health maintenance organization licensed under Title 56, Chapter 32;

(E) "Pathologist" is a physician who has completed a residency in pathology and whose practice is primarily limited to pathology, including, without limitation, anatomic and clinical pathology;

(F) "Physician" means a person licensed pursuant to Chapter 6 or 9 of this title; and

(G) "Radiologist" is a physician who has completed a residency in radiology and whose practice is primarily limited to radiology, including, without limitation, diagnostic radiology, radiation therapy, and radiation oncology.

SECTION 2. Tennessee Code Annotated, Section 68-11-205, is amended by adding a new subsection (c), and by re-designating existing subsections (c) and (d) as (d) and (e):

(c)(1) Notwithstanding the provisions of this section, nothing shall prohibit a renal dialysis clinic licensed under this chapter or an affiliate of a renal dialysis clinic from employing physicians, other than radiologists, anesthesiologists, pathologists, or emergency physicians, licensed under Title 63, Chapter 6 or 9, subject to the following conditions:

(A) Employing entities shall not restrict or interfere with medically appropriate diagnostic or treatment decisions;

(B) Employing entities shall not restrict or interfere with physician referral decisions, unless:

(i) The physician so employed has agreed in writing to the specific restrictions at the time that the contract is executed;

(ii) The restriction does not, in the reasonable medical judgment of the physician, adversely affect the health or welfare of the patient; and

(iii) The employing entity discloses any such restrictions to the patient; and

(C) In the event that there is any dispute relating to subdivision (c)(1)(A) or (B), the employing entity shall have the burden of proof.

(2) Employing entities shall not restrict the employed physician's right to practice medicine upon the termination or conclusion of the employment relationship, except as allowed by Tennessee Code Annotated, Section 63-1-148, or any successor section.

(3) Notwithstanding the provisions of Tennessee Code Annotated, Section 63-1-148, or any successor section, in the event that the

employment contract with a physician employed independently of a bona fide practice purchase is terminated by the employing entity for reasons other than breach by employee, any such restrictions shall be void.

(4) In any event, nothing in this section shall prohibit a licensed physician, group of licensed physicians, including, but not limited to, a physicians' professional corporation registered under Title 48, Chapter 101, from employing physicians.

(5) An affiliate of a renal dialysis clinic that employs physicians shall not engage in any business other than the employment of physicians, the management of physicians and health care facilities, the ownership of property and facilities used in the provision of health care services or a tissue bank or organ procurement agency. An affiliate of a renal dialysis clinic that employs physicians pursuant to this part shall be subject to the authority of the applicable licensing board under Chapter 11 of this title in connection with employment of physicians. Any violation of this subdivision (c)(5) by an affiliate shall subject any renal dialysis clinic, at which the physician has staff privileges, and that controls or is under common control with the affiliate, to the penalties and sanctions applied to renal dialysis clinics that employ physicians.

(6) No radiologist, anesthesiologist, pathologist, or emergency physician may be employed by a renal dialysis clinic or an affiliate of a renal dialysis clinic and no renal dialysis clinic or an affiliate of a renal dialysis clinic may employ any physician to provide medical services provided by radiologists, anesthesiologists, pathologists, or emergency physicians; provided, that a physician may be employed to provide emergency medical services if the physician is employed to provide other medical services.

(7) Employing entities shall not require, by contract or policy, that as a condition or consequence of employment, written or otherwise, employed physicians relinquish staff privileges, or the rights related to staff privileges, upon the commencement of, upon any event during the pendency of, or at the termination or conclusion of, the employment relationship. In any event, nothing in this section shall be construed as affecting or negating the ability of an employing renal dialysis clinic to revoke or suspend a physician's staff privileges in accordance with the procedures set forth in the staff bylaws. Renal dialysis clinics shall not substitute physician employment contracts for staff privileges. Nonemployed and employed physicians holding staff privileges at a renal dialysis clinic that is an employing entity, or renal dialysis clinics at which employed physicians hold staff privileges that are affiliates of employing entities, shall enjoy the same privileges, rights and protections with respect to staff membership. Employment of a physician shall not affect any other physician's staff privileges. Physicians who hold membership on staff at a renal dialysis clinic which is an employing entity, or a renal dialysis clinic at which employed physicians hold staff privileges that are affiliates of employing entities, shall be provided with the rights and protections, including rights of self-governance, afforded by the applicable

state licensing board, and, when accredited, the accrediting entity or agency.

(8) If a physician, in connection with a claim for breach of contract or other dispute related to § 63-6-204, establishes in a court of competent jurisdiction, or other forum, including in a peer review action or arbitration proceeding, that the conditions of § 63-6-204 have been violated by the employing entity, the physician shall be entitled to recover the physician's cost of litigation, arbitration, or peer review defense, and a reasonable attorney's fee.

(9) Employing entities shall not restrict or interfere with patient referral decisions in a manner that unnecessarily increases the cost to the patient of the medical services provided.

SECTION 3. Tennessee Code Annotated, Section 68-11-205(d)(1), which is re-designated as subdivision (e)(1) pursuant to Section 2 above, is amended by designating the existing language of subdivision (1) as (1)(A) and by adding the following as new subdivision (1)(B):

(B) "Affiliate" of a renal dialysis clinic means an entity that directly or indirectly is controlled by, or is under common control with, a renal dialysis clinic licensed under Chapter 11 of this title. "Affiliate" does not mean, however, a health maintenance organization licensed under Title 56, Chapter 32;

SECTION 4. Tennessee Code Annotated, Section 68-11-205(d)(4), which is re-designated as subdivision (e)(4) pursuant to Section 2 above, is amended by designating the existing language of subdivision (4) as (4)(A) and by adding the following as new subdivision (4)(B):

(4) "Employing entity" for purposes of subsection (c) of this section means a renal dialysis clinic licensed under Chapter 11 of this title or an affiliate of such an entity that employs one (1) or more physicians. "Employing entity" does not mean, however, a health maintenance organization licensed under Title 56, Chapter 32;

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 2, 2009



RON RAMSEY
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 15th day of April 2009



PHIL BREDESEN, GOVERNOR